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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Enforcement Of U.S. Import Admissibility Requirements: Better Management Could Save Work, Reduce Delays, And Improve Service And Importers' Compliance

SUMMARY

Custom's assistance is essential in determining whether imported food, vehicles, and other products are admissible under laws and regulations otherwise administered by other Federal agencies. This assistance is usually limited to Customs' inspection and control functions at the ports of entry, but when imports do not meet the admissibility requirements, Customs becomes the middleman in the enforcement proceedings between the importers and the other agencies. Streamlining Customs' role would reduce the excessive work, delays, and duplication of effort now being experienced.

Customs, with the advice of the Departments of Transportation, Agriculture, and Health and Human Services, and the Environmental Protection Agency, routinely reduces monetary penalties to the point that they usually are not effective in encouraging importers to fully and promptly comply with import admissibility requirements. Thus, contaminated foods, nonconforming vehicles, and other substandard goods are getting into commerce. The agencies need to ensure that penalties are large enough to encourage importers' full and prompt compliance.

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COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

ENFORCEMENT OF U.S. IMPORT ADMISSIBILITY REQUIREMENTS: BETTER MANAGEMENT COULD SAVE WORK, REDUCE DELAYS, AND IMPROVE SERVICE AND IMPORTERS' COMPLIANCE

D I G E S T

The U.S. Customs Service, an agency of the Department of the Treasury, enforces import admissibility requirements otherwise administered by over 40 other Federal agencies. Most often this work is accomplished routinely through Customs' inspection and control functions. For 40-plus agencies to conduct separate import inspections at the ports would be expensive and wasteful.

But when imports do not meet the admissibility requirements there are two major problems:

--First, Customs functions as a middleman in the administration of penalty proceedings between the importers and the other agencies. Current procedures result in inefficiency, delays, and confusion in seeking compliance with the import admissibility requirements.

--Second, the almost routine reduction of penalties weakens the effectiveness of this enforcement tool. Such reductions provide little or no incentive for importers to comply with admissibility requirements.

WHY THE REVIEW WAS MADE

GAO conducted this review to evaluate Customs' role in enforcing import admissibility requirements otherwise administered by over 40 other Federal agencies. Specifically, GAO was concerned with the effectiveness of Customs' and the other agencies' procedures for obtaining compliance with admissibility requirements.

BETTER MANAGEMENT OF ADMISSIBILITY REQUIREMENTS WOULD LESSEN BURDEN AND IMPROVE SERVICE

Using a random sample of 410 cases taken from 1,067 cases where penalties were imposed on importers at

five Customs' districts, GAO reviewed the enforcement of admissibility requirements of the Department of Transportation (DOT), Environmental Protection Agency (EPA), Department of Agriculture (USDA), and the Food and Drug Administration (FDA) of the Department of Health and Human Services (HHS). Customs believes these five districts are representative of its nationwide operations. GAO's work showed that enforcement practices are resulting in lengthy delays, excessive paper transactions, duplicative work, and confusion.

For example, a case involving a nonconforming foreign vehicle required 31 pieces of correspondence between the importer, Customs, and DOT over 2-1/2 years before final settlement. Significant time was lost by delays in Customs' forwarding information to DOT and vice versa. With some refinements to current procedures, the time needed to settle cases can be shortened substantially. (See pps. 7, 8, and 9.)

Dealing with several Federal agencies can be confusing to importers. For example, both FDA and Customs, in separate notices, told the same importers to destroy or export the goods as of a certain date. Not only is this duplicative but in 58 of the 178 sample cases the specified dates differed on the two notices. (See pps. 10 and 11.)

In the past, Customs has used its own resources for administering other agencies' admissibility requirements. But because of staffing cuts, Customs, as of late 1980, no longer takes on new requirements of other agencies unless additional staffing and funding (reimbursement) are provided.

EFFECTIVE USE OF PENALTIES NEEDED TO ASSURE COMPLIANCE WITH IMPORT ADMISSIBILITY REQUIREMENTS

The Federal agencies do not effectively use monetary penalties to encourage importers to fully and promptly comply with the admissibility laws and regulations. The almost routine reduction of penalties--to about 6 percent of the initial amount assessed--weakens the effectiveness of this enforcement tool and does not deter

importers from releasing contaminated foods and other nonconforming products into commerce.

By posting a performance bond with Customs, importers can bring products into the U.S. before all admissibility requirements have been fully met. The bond guarantees that the products will either be brought into compliance within a specified time, destroyed, exported, or redelivered to Customs. If the importer violates such provisions, Customs is authorized to assess a penalty up to the value of the product plus duties, if any.

In about 44 percent of the 410 cases GAO analyzed, importers failed to bring into conformity, return, export, or destroy all products ordered redelivered. Customs, on the advice of the other agencies, substantially reduced penalties on these cases despite the fact that some involved the release of contaminated food and nonconforming vehicles into commerce.

GAO believes that, before import admissibility requirements can effectively protect consumers and domestic commerce, the agencies need to require payment of a substantially larger percentage of the initial assessed penalty when such requirements are not met. Failure to do so will continue to provide little or no incentive for these importers to comply with the requirements.

RECOMMENDATIONS

GAO recommends that the Secretary of the Treasury reach agreement with the Secretaries of USDA, DOT, and HHS; and the Administrator of EPA on ways to expedite proceedings against importers who violate the conditions of their performance bonds and reduce the paperwork associated with Customs' middleman role in such proceedings.

Regarding Customs' mitigation authority, GAO also recommends that the Secretaries of USDA, DOT, and HHS; and the Administrator of EPA take the actions necessary to ensure that penalties, even though mitigated, are large enough to be an effective enforcement tool.

AGENCY COMMENTS AND GAO'S EVALUATION

HHS, USDA, DOT, Treasury, and EPA agreed with the thrust of GAO's recommendations concerning the need to streamline the administrative and enforcement proceedings among importers, Customs, and other agencies. Treasury agreed that Customs should work with all other agencies in an attempt to reduce the role of Customs in administering other agencies' requirements.

However, the agencies raised three issues that merit discussion:

--First, Treasury, HHS, USDA, and DOT question how much of Customs' enforcement authority can be delegated to the other agencies without statutory changes.

--Second, HHS and USDA question whether staff resources will be available to do the additional work if Customs' involvement is minimized.

--Third, HHS, DOT, and EPA believe that penalties are now being effectively used to encourage importers to comply with their import admissibility laws and regulations. (See appendixes.)

GAO is not recommending that Customs' authority to require or enforce a performance bond be delegated or reassigned. Should the agencies and Customs perceive a need for such, the many statutes involved should be cooperatively reviewed, and any necessary legislation should be sought. However, GAO is recommending that the agencies take steps to reduce the paperwork and delays that currently attend an importer's failure to perform under a Custom's bond.

Where permissible under the applicable statutes, one refinement to current procedures would be for the other agencies to prepare and transmit the required forms and notices upon Treasury's concurrence when importers fail to meet the conditions of their performance bonds. One

variant of this procedure already exists. Under an agreement with Treasury, FDA issues a Notice of Refusal of Admission in Customs' name. Customs, EPA, and FDA are developing additional procedures along these and other lines. GAO believes that Treasury should continue efforts to work out agreements with other agencies that would expedite the administrative process whenever practicable.

USDA stated that, if Customs' involvement is reduced, staff years and funds associated with the middleman role should be redistributed to other agencies. HHS noted that present resource constraints will preclude acquiring additional responsibilities. GAO does not believe that streamlining Customs' role will result in additional work for any Federal agency. On the contrary, Customs' work would be reduced significantly while the other agencies' work should remain about the same.

EPA, DOT, and HHS believe their penalty policies are adequate to effectively encourage importers' compliance with admissibility laws and regulations. GAO is not questioning their policies but rather the impact of the penalties as an enforcement tool. Although GAO did not evaluate the penalty policies, its specific concern is that the implementation of the policies has provided little or no incentive for importers to comply with the import admissibility requirements.

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ABBREVIATIONS

DOT	Department of Transportation
EPA	Environmental Protection Agency
FDA	Food and Drug Administration
GAO	General Accounting Office
HHS	Health and Human Services
ILP	Import Compliance and Interagency Liaison Program
USDA	Department of Agriculture